

AMENDED IN ASSEMBLY MAY 25, 1999  
AMENDED IN ASSEMBLY APRIL 8, 1999  
AMENDED IN ASSEMBLY MARCH 18, 1999  
AMENDED IN ASSEMBLY MARCH 4, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

**ASSEMBLY BILL**

**No. 254**

**Introduced by Assembly Member Cedillo**  
**(~~Coauthor: Assembly Member Baugh~~)**

February 1, 1999

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An act to amend Sections 5913, 5914, 5915, 5916, and 5919 of, and to add Sections 5920, 5921, 5922, 5923, 5924, and 5925 to, the Corporations Code, and to add Section 1260.1 to the Health and Safety Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 254, as amended, Cedillo. Health facilities: sale of assets.

(1) Existing law requires any nonprofit corporation that is subject to the Nonprofit Public Benefit Corporation Law and is a health facility, as defined, or is a facility that provides similar health care, to provide written notice to, and obtain the written consent of, the Attorney General prior to selling or otherwise disposing of a material amount of its assets to a for-profit corporation or entity or to a mutual benefit corporation or entity. Existing law requires the Attorney General to conduct one or more public meetings prior to

issuing its decision whether to consent to the proposed agreement or transaction, and, in any case, to issue its decision within 60 days of the receipt of the written notice from the public benefit corporation, subject to one additional 45-day extension if necessary to obtain certain additional information. Existing law authorizes the Attorney General to contract with outside experts and consultants to assist the Attorney General in making its determination and requires the public benefit corporation to reimburse the Attorney General for all actual, reasonable, and direct costs incurred by the Attorney General in reviewing, evaluating, and making its determination.

This bill would instead make these requirements applicable to any nonprofit corporation that is subject to the Nonprofit Public Benefit Corporation Law and operates or controls a health facility or operates or controls a facility that provides similar health care, and to any foreign nonprofit corporation that operates or controls a health facility or a facility that provides similar care.

This bill would also require the Attorney General to make available to the public in written form the notice provided by the health facility and any other information provided to it under these provisions. It would also authorize the Attorney General to conduct an additional public meeting in specified circumstances prior to issuing its decision whether to consent to the proposed agreement or transaction and would expand the circumstances under which the Attorney General may extend the 60-day period of review for an additional 45 days.

This bill would also authorize the Attorney General to contract with outside experts and consultants to assist the Attorney General in monitoring ongoing compliance with the terms and conditions of the sale or transfer of assets, and would require the public benefit corporation to reimburse the Attorney General for all actual, reasonable, and direct costs incurred by the Attorney General in monitoring that ongoing compliance.

This bill would also enact similar provisions applicable to any nonprofit corporation of the type described above that wishes to sell or otherwise dispose of a material amount of its



assets to a public benefit corporation or entity. It would also make certain technical, conforming changes.

(2) Existing law provides for the licensure of health facilities, including general acute care hospitals, by the State Department of Health Services, and makes a violation of those provisions subject to criminal sanction.

Existing law prohibits any member of the board of directors of a nonprofit health facility that is required to obtain the written consent of the Attorney General under existing law prior to the sale or transfer of its assets to a for-profit corporation or entity or mutual benefit corporation or entity, who negotiates the terms and conditions of the sale or transfer of assets, from receiving financial remuneration from the purchasing entity, subject to certain exceptions.

This bill would enact a similar prohibition with regard to the sale or transfer of assets by a nonprofit public benefit corporation that owns or operates a health facility to another public benefit corporation, *and would define a transfer for these purposes to include the substitution of a new corporate member or members*. By creating this new prohibition in the provisions governing health facilities, this bill would expand the scope of an existing crime, thereby imposing a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 5913 of the Corporations Code is  
2 amended to read:

3 5913. Except for an agreement or transaction subject  
4 to Section 5914 or 5920, a corporation shall give written  
5 notice to the Attorney General 20 days before it sells,  
6 leases, conveys, exchanges, transfers or otherwise

1 disposes of all or substantially all of its assets unless the  
2 transaction is in the usual and regular course of its  
3 activities or unless the Attorney General has given the  
4 corporation a written waiver of this section as to the  
5 proposed transaction.

6 SEC. 2. Section 5914 of the Corporations Code is  
7 amended to read:

8 5914. (a) (1) Any nonprofit corporation that is  
9 subject to the public benefit corporation law and operates  
10 or controls a health facility, as defined in Section 1250 of  
11 the Health and Safety Code, or operates or controls a  
12 facility that provides similar health care, shall be required  
13 to provide written notice to, and to obtain the written  
14 consent of, the Attorney General prior to entering into  
15 any agreement or transaction to do either of the  
16 following:

17 ~~(1)–~~

18 (A) Sell, transfer, lease, exchange, option, convey, or  
19 otherwise dispose of, its assets to a for-profit corporation  
20 or entity or to a mutual benefit corporation or entity  
21 when a material amount of the assets of the public benefit  
22 corporation are involved in the agreement or transaction.

23 ~~(2)–~~

24 (B) Transfer control, responsibility, or governance of  
25 a material amount of the assets or operations of the  
26 nonprofit public benefit corporation to any for-profit  
27 corporation or entity or to any mutual benefit corporation  
28 or entity.

29 (2) *The substitution of a new corporate member or*  
30 *members shall be deemed a transfer for purposes of this*  
31 *article.*

32 (b) The notice to the Attorney General provided for  
33 in this section shall include and contain the information  
34 the Attorney General determines is required. The notice,  
35 including any other information provided to the Attorney  
36 General under this article, shall be made available by the  
37 Attorney General to the public in written form, as soon  
38 as is practicable after it is received by the Attorney  
39 General.



(c) This section shall not apply to a public benefit corporation if the agreement or transaction is in the usual and regular course of its activities or if the Attorney General has given the corporation a written waiver of this section as to the proposed agreement or transaction.

(d) This section shall apply to any foreign nonprofit corporation that operates or controls a health facility, as defined in Section 1250 of the Health and Safety Code, or a facility that provides similar health care.

SEC. 3. Section 5915 of the Corporations Code is amended to read:

5915. Within 60 days of the receipt of the written notice required by Section 5914, the Attorney General shall notify the public benefit corporation in writing of the decision to consent to, give conditional consent to, or not consent to the agreement or transaction. The Attorney General may extend this period for one additional 45-day period if any of the following conditions are satisfied:

(a) The extension is necessary to obtain information pursuant to subdivision (a) of Section 5919.

(b) The proposed agreement or transaction is substantially modified after the first public meeting conducted by the Attorney General in accordance with Section 5916.

(c) The proposed agreement or transaction involves a multifacility health system serving multiple communities, rather than a single facility.

SEC. 4. Section 5916 of the Corporations Code is amended to read:

5916. Prior to issuing any written decision referred to in Section 5915, the Attorney General shall conduct one or more public meetings, one of which shall be in the county in which the facility is located, to hear comments from interested parties. At least 14 days before conducting the public meeting, the Attorney General shall provide written notice of the time and place of the meeting through publication in one or more newspapers of general circulation in the affected community and to the board of supervisors of the county in which the facility

1 is located. If a substantive change in the proposed  
2 agreement or transaction is submitted to the Attorney  
3 General after the initial public meeting, the Attorney  
4 General may conduct an additional public meeting to  
5 hear comments from interested parties with respect to  
6 that change.

7 SEC. 5. Section 5919 of the Corporations Code is  
8 amended to read:

9 5919. (a) Within the time periods designated in  
10 Section 5915 and relating to those factors specified in  
11 Section 5917, the Attorney General may do the following:

12 (1) Contract with, consult, and receive advice from  
13 any state agency on those terms and conditions that the  
14 Attorney General deems appropriate.

15 (2) In his or her sole discretion, contract with experts  
16 or consultants to assist in reviewing the proposed  
17 agreement or transaction.

18 (b) Contract costs shall not exceed an amount that is  
19 reasonable and necessary to conduct the review and  
20 evaluation. Any contract entered into under this section  
21 shall be on a noncompetitive bid basis and shall be exempt  
22 from Chapter 2 (commencing with Section 10290) of Part  
23 2 of Division 2 of the Public Contract Code. The nonprofit  
24 public benefit corporation, upon request, shall pay the  
25 Attorney General promptly for all contract costs.

26 (c) The Attorney General shall be entitled to  
27 reimbursement from the nonprofit public benefit  
28 corporation for all actual, reasonable, direct costs  
29 incurred in reviewing, evaluating, and making the  
30 determination referred to in this article, including  
31 administrative costs. The nonprofit public benefit  
32 corporation shall promptly pay the Attorney General,  
33 upon request, for all of those costs.

34 (d) (1) In order to monitor effectively ongoing  
35 compliance with the terms and conditions of any sale or  
36 transfer of assets subject to Section 5914, including, but  
37 not limited to, the ongoing use of the charitable assets in  
38 a manner consistent with the trust pursuant to which they  
39 are held, the Attorney General may, in his or her sole



1 discretion, contract with experts and consultants to assist  
2 in this regard.

3 (2) Contract costs shall not exceed an amount that is  
4 reasonable and necessary to conduct the review and  
5 evaluation. Any contract entered into under this section  
6 shall be on a noncompetitive bid basis and shall be exempt  
7 from Chapter 2 (commencing with Section 10290) of Part  
8 2 of Division 2 of the Public Contract Code. The public  
9 benefit corporation shall pay the Attorney General  
10 promptly for all contract costs.

11 (3) The Attorney General shall be entitled to  
12 reimbursement from the public benefit corporation for  
13 all actual, reasonable, and direct costs incurred in  
14 monitoring ongoing compliance with the terms and  
15 conditions of the sale or transfer of assets, including  
16 administrative costs. The public benefit corporation shall  
17 promptly pay the Attorney General upon request for all  
18 of those costs.

19 SEC. 6. Section 5920 is added to the Corporations  
20 Code, to read:

21 5920. (a) (1) Any nonprofit corporation that is  
22 subject to the public benefit corporation law and operates  
23 or controls a health care facility, as defined in Section 1250  
24 of the Health and Safety Code, or operates or controls a  
25 facility that provides similar health care, shall be required  
26 to provide written notice to, and to obtain the written  
27 consent of, the Attorney General prior to entering into  
28 any agreement or transaction to do either of the  
29 following:

30 ~~(1)–~~

31 (A) Sell, transfer, lease, exchange, option, convey, or  
32 otherwise dispose of, its assets to another public benefit  
33 corporation or entity when a material amount of the  
34 assets of the public benefit corporation are involved in the  
35 agreement or transaction.

36 ~~(2)–~~

37 (B) Transfer control, responsibility, or governance of  
38 a material amount of the assets or operations of the  
39 nonprofit public benefit corporation to another public  
40 benefit corporation or entity.

1     (2) *The substitution of a new corporate member or*  
2 *members shall be deemed a transfer for purposes of this*  
3 *article.*

4     (b) The notice to the Attorney General provided for  
5 in this section shall contain the information the Attorney  
6 General determines is required. The notice, including  
7 any other information provided to the Attorney General  
8 under this article, shall be made available by the Attorney  
9 General to the public in written form, as soon as is  
10 practicable after it is received by the Attorney General.

11     (c) This section shall not apply to a public benefit  
12 corporation if the agreement or transaction is in the usual  
13 and regular course of its activities or if the Attorney  
14 General has given the corporation a written waiver of this  
15 section as to the proposed agreement or transaction.

16     (d) This section shall apply to any foreign nonprofit  
17 corporation that operates or controls a health facility, as  
18 defined in Section 1250 of the Health and Safety Code, or  
19 a facility that provides similar health care.

20     (e) This section shall not apply to an agreement or  
21 transaction if the other party to the agreement or  
22 transaction is an affiliate, as defined in Section 5031, of the  
23 transferring nonprofit public benefit corporation or  
24 entity, and the corporation or entity has given the  
25 Attorney General 20 days advance notice of the  
26 agreement or transaction.

27     SEC. 7. Section 5921 is added to the Corporations  
28 Code, to read:

29     5921. Within 60 days of the receipt of the written  
30 notice required by Section 5920, the Attorney General  
31 shall notify the public benefit corporation in writing of  
32 the decision to consent to, give conditional consent to, or  
33 not consent to the agreement or transaction. The  
34 Attorney General may extend this period for one  
35 additional 45-day period if any of the following conditions  
36 are satisfied:

37     (a) The extension is necessary to obtain relevant  
38 information from any state agency, experts, or  
39 consultants.



(b) The proposed agreement or transaction is substantially modified after the first public meeting conducted by the Attorney General in accordance with Section 5922.

(c) The proposed agreement or transaction involves a multifacility health system serving multiple communities, rather than a single facility.

SEC. 8. Section 5922 is added to the Corporations Code, to read:

5922. Prior to issuing any written decision referred to in Section 5921, the Attorney General shall conduct one or more public meetings, one of which shall be in the county in which the facility is located, to hear comments from interested parties. At least 14 days before conducting the public meeting, the Attorney General shall provide written notice of the time and place of the meeting through publication in one or more newspapers of general circulation in the affected community and to the board of supervisors of the county in which the facility is located. If a substantive change in the proposed agreement or transaction is submitted to the Attorney General after the initial public meeting, the Attorney General may conduct an additional public meeting to hear comments from interested parties with respect to that change.

SEC. 9. Section 5923 is added to the Corporations Code, to read:

5923. The Attorney General shall have discretion to consent to, give conditional consent to, or not consent to any agreement or transaction described in subdivision (a) of Section 5920. In making the determination, the Attorney General shall consider any factors that the Attorney General deems relevant, including, but not limited to, whether any of the following apply:

(a) The agreement or transaction will result in inurement to any private person or entity.

(b) The proposed use of the proceeds from the agreement or transaction is consistent with the charitable trust on which the assets are held by the health facility or by the affiliated nonprofit health system.

1 (c) The agreement or transaction involves or  
2 constitutes any breach of trust.

3 (d) The Attorney General has been provided,  
4 pursuant to Section 5250, with sufficient information and  
5 data by the nonprofit public benefit corporation to  
6 evaluate adequately the agreement or transaction or the  
7 effects thereof on the public.

8 (e) The agreement or transaction may create a  
9 significant effect on the availability or accessibility of  
10 health care services to the affected community.

11 (f) The proposed agreement or transaction is in the  
12 public interest.

13 SEC. 10. Section 5924 is added to the Corporations  
14 Code, to read:

15 5924. (a) Within the time periods designated in  
16 Section 5921 and relating to those factors specified in  
17 Section 5923, the Attorney General may do the following:

18 (1) Contract with, consult, and receive advice from  
19 any state agency on those terms and conditions that the  
20 Attorney General deems appropriate.

21 (2) In his or her sole discretion, contract with experts  
22 or consultants to assist in reviewing the proposed  
23 agreement or transaction.

24 (b) Contract costs shall not exceed an amount that is  
25 reasonable and necessary to conduct the review and  
26 evaluation. Any contract entered into under this section  
27 shall be on a noncompetitive bid basis and shall be exempt  
28 from Chapter 2 (commencing with Section 10290) of Part  
29 2 of Division 2 of the Public Contract Code. The selling  
30 nonprofit public benefit corporation, upon request, shall  
31 pay the Attorney General promptly for all contract costs.

32 (c) The Attorney General shall be entitled to  
33 reimbursement from the selling nonprofit public benefit  
34 corporation for all actual, reasonable, direct costs  
35 incurred in reviewing, evaluating, and making the  
36 determination referred to in Section 5921, including  
37 administrative costs. The selling nonprofit public benefit  
38 corporation shall promptly pay the Attorney General,  
39 upon request, for all of those costs.

(d) (1) In order to effectively monitor ongoing compliance with the terms and conditions of any sale or transfer of assets subject to Section 5920, including, but not limited to, the ongoing use of the charitable assets in a manner consistent with the trust pursuant to which they are held, the Attorney General may, in his or her sole discretion, contract with experts and consultants to assist in this regard.

(2) Contract costs shall not exceed an amount that is reasonable and necessary to conduct the review and evaluation. Any contract entered into under this section shall be on a noncompetitive bid basis and shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code. The selling nonprofit public benefit corporation shall pay the Attorney General promptly for all contract costs.

(3) The Attorney General shall be entitled to reimbursement from the selling public benefit corporation for all actual, reasonable, and direct costs incurred in monitoring ongoing compliance with the terms and conditions of the sale or transfer of assets, including administrative costs. *The Attorney General shall be entitled to this reimbursement for a period of time not to exceed two years after any time period specified in the terms or conditions of sale or transfer of assets.* The selling nonprofit public benefit corporation shall promptly pay the Attorney General upon request for all of those costs.

SEC. 11. Section 5925 is added to the Corporations Code, to read:

5925. The Attorney General may adopt regulations implementing Sections 5920 to 5924, inclusive.

SEC. 12. Section 1260.1 is added to the Health and Safety Code, to read:

1260.1. (a) Except as provided in subdivision (b), any member of the board of directors of a nonprofit corporation that is subject to Section 5920 of the Corporations Code, who negotiates the terms and conditions of a sale or transfer of assets, as described in Section 5920 of the Corporations Code, is prohibited from

1 receiving, directly or indirectly, any salary,  
2 compensation, payment, or other form of remuneration  
3 from the purchasing public benefit corporation or entity  
4 following the close of the sale or other transfer of assets.  
5 This prohibition shall not apply to any reimbursement or  
6 payment made to a member of the board of directors,  
7 who is a physician or other health care provider, for direct  
8 patient care services provided to patients covered by a  
9 health insurer, health care service plan, employer, or  
10 other entity that provides health care coverage, and that  
11 is owned, operated, or affiliated with the purchasing  
12 public benefit corporation or entity, provided that the  
13 amounts payable for the services rendered are no greater  
14 than the amounts payable to other physicians or health  
15 care providers providing the same or similar services.

16 For the purpose of this section, “direct patient care  
17 services” means health care services provided directly to  
18 a patient, and does not include services provided through  
19 an intermediary. Further, in order to qualify for the  
20 exemption in this subdivision, the direct patient care  
21 services must be health care services that are regularly  
22 provided by other physicians or other health care  
23 providers in the community who are also receiving  
24 reimbursements or payments from the same health  
25 insurer, health care service plan, employer, or other  
26 entity that is owned or operated by, or affiliated with, the  
27 purchasing public benefit corporation or entity.

28 (b) After a period of two years following the close of  
29 the sale or other transfer of assets, a person who was a  
30 member of the board of directors of the selling nonprofit  
31 corporation who is prohibited from receiving any  
32 remuneration from the purchasing public benefit  
33 corporation or entity under subdivision (a) may enter  
34 into usual and customary business transactions with the  
35 purchasing public benefit corporation or entity so long as  
36 the following facts are established:

37 (1) Prior to authorizing or approving the transaction,  
38 the representative of the purchasing public benefit  
39 corporation or entity considered and in good faith  
40 determined after reasonable investigation under the

1 circumstances that the purchasing public benefit  
2 corporation could not have obtained a more  
3 advantageous arrangement with reasonable effort under  
4 the circumstances.

5 (2) The purchasing public benefit corporation or  
6 entity, in fact, could not have obtained a more  
7 advantageous arrangement with reasonable effort under  
8 the circumstances.

9 (c) Any person who is a member of management of  
10 the selling nonprofit corporation and who presents  
11 information or opinions to the board regarding the sale or  
12 other transfer of assets as described in subdivision (a) that  
13 are relied upon, or considered by, any of the board  
14 members in making decisions regarding the sale or  
15 transfer, may make a written affirmative declaration that  
16 he or she will not work for, or receive any form of  
17 remuneration from, the purchasing public benefit  
18 corporation or entity in the future.

19 (d) In making any decision regarding the sale or other  
20 transfer of the nonprofit corporation's assets, as described  
21 in Section 5920 of the Corporations Code, the board of the  
22 selling nonprofit corporation is prohibited from  
23 substantially relying on any information presented by any  
24 person to whom subdivision (c) applies who has not made  
25 a written affirmative declaration pursuant to subdivision  
26 (c). This subdivision shall not apply to any person whose  
27 only role in the sale or transfer is to provide to the selling  
28 nonprofit corporation exclusively factual information  
29 about the selling nonprofit corporation, community,  
30 financial status, or other similar data.

31 (e) In performing those duties of a director set forth  
32 in subdivision (d), the board of directors may contract  
33 with independent counsel, accountants, financial  
34 analysts, or other professionals whom the board believes  
35 to be reliable and competent in the matters presented, to  
36 review and evaluate information and advice presented  
37 by an employee who has not signed an affirmative  
38 declaration pursuant to subdivision (c). Any director who  
39 substantially relies on information and advice presented



1 by the independent professional shall be deemed to have  
2 not violated subdivision (d).

3 SEC. 13. No reimbursement is required by this act  
4 pursuant to Section 6 of Article XIII B of the California  
5 Constitution because the only costs that may be incurred  
6 by a local agency or school district will be incurred  
7 because this act creates a new crime or infraction,  
8 eliminates a crime or infraction, or changes the penalty  
9 for a crime or infraction, within the meaning of Section  
10 17556 of the Government Code, or changes the definition  
11 of a crime within the meaning of Section 6 of Article  
12 XIII B of the California Constitution.

13

14 CORRECTIONS

15 **Heading — Line 2.**

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17

